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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,866	05/29/2001	Brian Sorrentino	1340-1-021CIP2	4688
31949	7590	01/14/2004	EXAMINER	
LICATA & TYRRELL P.C. 66 E. MAIN STREET MARLTON, NJ 08053			QIAN, JANICE LI	
			ART UNIT	PAPER NUMBER
			1632	

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SM.

Advisory Action

Application No.

09/866,866

Applicant(s)

SORRENTINO ET AL.

Examiner

Q. Janice Li

Art Unit

1632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/18/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 7 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 20 November 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☐ The proposed amendment(s) will not be entered because:
 (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
 6. ☒ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 16, 17, 21-28.

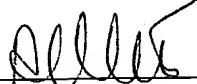
Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other: _____

ANNE M. WEHBE' PH.D.
 PRIMARY EXAMINER



Continuation of 5. does NOT place the application in condition for allowance because:

In the response to the first Advisory action mailed 12/5/2003, two issues were raised by the applicants' representative.

First, the Declaration is not defective, that the unexecuted Declaration was expeditiously perfected and received by the Office on 10/28/03 as evidenced by a returned postcard dated 10/28/03.

In response, the only Declaration currently on record was an unexecuted one, which was stamped as received by the Office on October 24, 2003.

Second, the Declaration was prepared based upon the interview with the Examiners Li and Reynolds and the suggestions of the Examiners, and addresses only the issues raised by the Final rejection.

In response, the interview was taken place after the Final Office action. It should be made of record that during interview, the Examiners made constructive suggestions in order to advance the prosecution of the present patent application. It is particularly noteworthy that in response to Applicants inquiry, the Supervisory Examiner Reynolds pointed out that the prosecution was at the stage of after Final action, thus it is proper to file RCE in response to the Final action and filing of a Declaration. Applicants' representative Jane M. Licata agreed to do so at the time.

As applicants' representative indicated in the response, the Declaration refers to the degree of predictability with respect to the cited references Ross and Niman, and distinguishes the teachings of the prior art references Ross and Niman. These two references have been on record since the first Office action. Accordingly, the Declaration is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

Therefore, even if the Declaration was perfected before the first Advisory action was mailed, the Declaration would not have been considered.